

**PREHEARING ORDER OF COMMISSION**

---

In the matter of Objection No. 011 filed by Sheet Metal Workers' International Association, Local Union No. 2, (Objector) on April 6, 2006, to Annual Wage Order No. 13, pertaining to the wage rate for the occupational title of Sheet Metal Workers in the Missouri County of Linn, Section 058; issued by the Division of Labor Standards, Department of Labor and Industrial Relations; filed with the Secretary of State: March 10, 2006.

---

**I. Prehearing Conference**

On May 4, 2006, pursuant to 8 CSR 20-5.010(3)(A), a prehearing conference was convened on the above-referenced Objection for the purpose of aiding in the disposition of the hearing. Present at the prehearing conference were:

Assistant Attorney General Michael Pritchett, counsel for the Division of Labor Standards (Division);  
Allen E. Dillingham, for the Division;  
James J. Boeckman, for the Division; and,  
William A. Jolley, counsel for Objector, Sheet Metal Workers' International Association, Local Union No. 2.

Susan Venturella is the Commission's designated representative and presided over the prehearing conference.

**II. Prefiled Testimony and Exhibits**

In accordance with the procedure to be followed at the hearing, as set out in 8 CSR 20-5.010(4), the following evidence was submitted:

**For Objector:**

The prepared direct testimony of Gregory Chastain, Business Representative of Sheet Metal Workers' International Association, Local Union No. 2, and referenced exhibits.

**For the Division:**

The prepared direct testimony of Allen E. Dillingham, Director of the Missouri Division of Labor Standards, and referenced exhibits.

**III. Issues for the Hearing**

Objector challenges the Division's determination that the prevailing wage for Sheet Metal Workers in Linn County is \$41.92 per hour. Objector proposes a rate of \$31.43 per hour with \$12.48 in total fringe benefits. Objector asserts that the Division has not considered 532.5 hours (disputed hours) worked at the rate set forth in the Agreement between Sheet Metal and Air Conditioning Contractors' National Association, Kansas City Chapter, Inc. and Sheet Metal Workers' International Association Local Union No. 2. Objector contends that the disputed hours were timely reported on a Contractor's Report of Construction Wage Rates filed with the Division before the Division's deadline, which report was subsequently amended to correct an error in a component of the wage rate. Objector also challenges the Division's determination regarding the overtime and holiday schedules. Objector asserts the overtime and holiday

schedules should be borrowed from the collective bargaining agreement as set forth in the Objection.

The Division responds that the wage rate identified in Annual Wage Order No. 13 reflects the rate for which the most hours were reported as of the expiration of the reporting deadline, including grace period, established by the Division. The Division argues the disputed hours are not properly includible in the determination of the prevailing wage because Objector did not report the disputed hours before the deadline for reporting said hours as established by the Division. The Division objects to the overtime rate language as set forth in the Objection to the extent it makes the overtime rate dependent upon the scheduling of a worker for a minimum number of work hours.

The Division asserts that the inclusion of hours reported after the deadline is inappropriate in that the allowance of late reporting:

- results in unnecessary delay and expense in finalizing the annual wage order, thereby, increasing both the public and private cost of the wage survey process;
- creates a disincentive to timely reporting; and,
- provides an advantage to entities who disregard the deadlines and file late vis-à-vis those entities who respect the deadlines and report no hours after the deadline.

#### **IV. Hearing**

The hearing before the Commission is scheduled for Monday, May 22, 2006, at 10:00 a.m. and if necessary, for Tuesday, May 23, 2006, at 10:00 a.m., in Jefferson City, Missouri. The location of the hearing is the Department of Labor and Industrial Relations Building, 3315 West Truman Boulevard, in the second floor conference room.

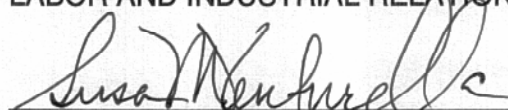
If there are no factual issues in dispute between the parties, the Commission will entertain a joint request to consider the legal issues presented upon written briefs. Such request will be granted provided the request is accompanied by a written stipulation of fact executed by all parties.

"No direct evidence, other than the testimony and documents filed at the prehearing conference, will be allowed at the hearing, except at the discretion of the Commission." 8 CSR 20-5.010(4)(B)4.

This Order is prepared in accordance with 8 CSR 20-5.010(3)(B) and is hereby executed by the Commission's designated representative.

Given at the City of Jefferson, State of Missouri, this 11<sup>th</sup> day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



Susan M. Venturella  
Designated Representative